

X. PARTIES RESPONSIBLE FOR DISCLOSURE-RELATED DEFICIENCIES AND VIOLATIONS OF LAW

A. City Auditor and Comptroller's Office

Many branches of City government contributed to the City's repeated issuance of false and misleading statements to the investing public. No office, however, failed the City and its investors more than the Office of the City Auditor and Comptroller. Worse, the conduct of City Auditor and Comptroller Ed Ryan and his second-in-command, Terri Webster, cannot be written off to incompetence. The evidence suggests that Mr. Ryan and Ms. Webster acted deliberately: they both knew of the City's looming pension crisis, and Mr. Ryan was aware of the City's violation of the Clean Water Act and its wastewater grant and loan conditions, but intentionally concealed these threats to the City in order to deceive the investing public. Unfortunately, responsibility for the Office's failures extends beyond its heads. Accountants working under Mr. Ryan and Ms. Webster – Phil Phillips, Cecilia San Pedro, and Rudy Graciano – had responsibility for preparing or reviewing the City's disclosures regarding the pension system, but did not perform their jobs competently.

As discussed above, the City Auditor and Comptroller's Office was principally responsible for the City's annual CAFRs. As the heads of the Office, Mr. Ryan and Ms. Webster, were ultimately responsible for the preparation, review, and final approval of the CAFRs. Mr. Ryan and Ms. Webster were at the center of the decisions to underfund the pension system: MP-1;¹¹³³ MP-2;¹¹³⁴ and the artifices designed to conceal that underfunding, such as the characterization of the *Corbett* liability as contingent.¹¹³⁵ Mr. Ryan was also present at Dennis Kahlie's January 29, 2002 closed session presentation in which he was informed that the City's sewer rates were out of compliance with its grant and loan conditions, and as a result faced a potential liability of hundreds of millions of dollars.¹¹³⁶ In November 2002, he was again informed of the

¹¹³³ See, e.g., Draft Memorandum from Jack McGrory to Distribution (Feb. 29, 1996); Handwritten notes (May 16, 1996); E-mail from Terri Webster (June 21, 1996); Minutes, SDCERS Board Meeting (June 21, 1996). While there is little evidence directly linking Mr. Ryan to the decision to implement MP-1, it is difficult to believe Ms. Webster would have acted on a central matter such as this, without first consulting with Mr. Ryan.

¹¹³⁴ See, e.g., E-mail from Mary Vattimo to Ed Ryan, Terri Webster, and Cathy Lexin cc to Bruce Herring (Feb. 28, 2002); E-mail from Terri Webster to Daniel Kelley (May 21, 2002); Minutes, SDCERS Board Meeting at 38 (July 11, 2002).

¹¹³⁵ See, e.g., E-mail from Terri Webster to Ed Ryan (Apr. 4, 2000); Memorandum from City Auditor and Comptroller to Honorable Mayor and City Council (April 11, 2000).

¹¹³⁶ City of San Diego City Council Closed Session Report (Jan. 29, 2002); Interview by the Audit Committee with Dennis Kahlie (Nov. 18, 2005).

severity of the issue when he received Mr. Kahlie's Salient Points Memo, which further described the City's violations and potential liability.¹¹³⁷

Year after year, Mr. Ryan and Ms. Webster approved CAFRs containing false and misleading statements and significant omissions concerning these matters.¹¹³⁸ Notwithstanding their knowledge of MP-1, Mr. Ryan and Ms. Webster approved CAFRs falsely stating that "SDCERS' funding policy provides for periodic employer contributions at actuarially determined rates," and in later years reassuring investors following "changes" to employer contribution rates, that there was a "provision to assure the funding level of the system would not drop below a level the Board's actuary deems reasonable."¹¹³⁹ Those CAFRs failed to disclose: (a) the "changes" resulted in the City contributing at rates lower than those actuarially required; (b) if the SDCERS funded ratio fell below 82.3%, a trigger would be hit that would require the City to make a potentially crippling lump-sum payment to SDCERS; and (c) at times the funded ratio came dangerously close to that trigger. And, of course, none of the CAFRs made any mention of the City's violation of its grant and loan conditions resulting in a potential liability of hundreds of millions of dollars.

Notwithstanding these false statements and material omissions, Ed Ryan signed each CAFR for the years ending June 30, 1996, through June 30, 2002, representing to the investing public that the data in each was "accurate in all material respects and are reported in a manner designed to present fairly the financial position and results of operations of the various funds and account groups of the City and its related agencies."¹¹⁴⁰ In these CAFRs, Mr. Ryan added: "All disclosures necessary to enable the reader to gain an understanding of the City's, and its related agencies', financial activities have been included."¹¹⁴¹

In the CAFR for the year ended June 30, 2002, Mr. Ryan certified that "[a]s a recipient of federal, state and local financial assistance, the City also is responsible for ensuring that an adequate internal control structure is in place to ensure compliance with applicable laws and regulations related to those

¹¹³⁷ E-mail from Dennis Kahlie to Mary Vattimo, Kelly Salt, George Loveland, Pat Frazier, Richard Mendez, and Ed Ryan, with attached Salient Points Sewer Cost of Service Compliance Issue (Nov. 13, 2002).

¹¹³⁸ As a CPA, Ms. Webster had additional ethical obligations to comply with GAAP. *See, e.g.*, E-mail from Lakshmi Kommi to Terri Webster (Sept. 22, 2004) (in which Ms. Webster's e-mail signature identifies her as a CPA); Title 16, California Code of Regulations, Section 58 (2006) ("Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards").

¹¹³⁹ *See, e.g.*, City of San Diego, California, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2000, at 20-29, 20-30 (Nov. 30, 2000).

¹¹⁴⁰ *See, e.g.*, City of San Diego, California, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2000, at vii (Nov. 30, 2000).

¹¹⁴¹ *See, e.g.*, City of San Diego, California, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2000, at vii (Nov. 30, 2000).

programs.”¹¹⁴² But this CAFR failed to disclose that the City was violating the Clean Water Act and its grant and loan conditions, as Mr. Ryan learned at the closed session on January 29, 2002, or that the City Council’s response to learning of the City’s violations was to “Let ‘em sue us.”¹¹⁴³

Mr. Ryan’s and Ms. Webster’s failures cannot be written off as a mere oversight. Their words reveal that they acted deliberately to conceal harmful facts from the rating agencies and, accordingly, the investing public. As Mr. Ryan put it in 1998:

. . . [W]hen we book the NPO [showing the shortfall between the actuarially calculated contribution and what the City paid under MP-1] the rating agencies won’t like it. It will be a negative for the City. As we market a large amount of bonds it might cost us a lot of money. Not quantifiable at the moment.¹¹⁴⁴

Terri Webster, in a July 2002 e-mail to Mr. Ryan, underscored this concern:

Regarding cathy’s [Lexin] letter my biggest suggestion to her is to eliminate any reference to fitch and rating agencies This letter will be seen by press and the city does not need to telegraph its pension problems to the rating agencies who don’t research the topic to any great level now.¹¹⁴⁵

Ms. Webster was even more explicit in an e-mail sent earlier in 2002 to fellow SDCERS Board member Ray Garnica, in which she attempted to explain the significance of the funded ratio trigger contained in MP-1:

Rating Agency Impacts:

The Funding Ratio is a fiscal indicator of the health of the CERS fund which is a major fund of the City. A large drop in funding ratio or dropping below certain benchmarks could result in a negative impact to the City’s credit rating. The City has a high credit rating which is vital to keep borrowing costs down for future issuances on the horizon such as for fire stations, main library, and branch libraries, etc.¹¹⁴⁶

Mr. Ryan and Ms. Webster are not the only members of the City Auditor and Comptroller’s Office who allowed inaccurate pension disclosures to be made. Accounting Division Manager Phil Phillips,

¹¹⁴² City of San Diego, California, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2002, at vi (Nov. 27, 2002).

¹¹⁴³ E-mail from Les Girard to Dennis Kahlie cc to Patricia Frazier and Mary Vattimo (Apr. 15, 2004); City of San Diego, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2002 (Nov. 27, 2002); Interview by the Audit Committee with Dennis Kahlie (Oct. 18, 2005).

¹¹⁴⁴ E-mail from Ed Ryan to Terri Webster (Mar. 31, 1998).

¹¹⁴⁵ E-mail from Terri Webster to Ed Ryan (July 2, 2002).

¹¹⁴⁶ E-mail from Terri Webster to Ray Garnica (Mar. 18, 2002).

Accounting Operations Supervisor Rudy Graciano, and Lead Accountant Cecilia San Pedro each had a role in preparing and/or reviewing the pension footnotes in the CAFRs.¹¹⁴⁷ Ms. San Pedro, a certified public accountant, bore primary responsibility for the City's pension accounting.¹¹⁴⁸ Ms. San Pedro said that she understood her responsibilities for the pension footnote were limited to updating the previous year's numbers.¹¹⁴⁹ She openly acknowledged that she never reviewed that footnote's text, since she did not believe it was her job to do so.¹¹⁵⁰ Mr. Graciano, also a certified public accountant, supervised Ms. San Pedro, and he similarly disclaimed any responsibility for ensuring the accuracy of the pension footnote. He believed Ms. Webster would have been the only one with the relevant pension knowledge and thus the ability to make sure it was correct.¹¹⁵¹ But, he surmised that between Mr. Phillips and Ms. Webster, each would have pointed to the other as the person bearing ultimate review responsibility for the pension footnotes.¹¹⁵² Mr. Phillips, Mr. Graciano's supervisor, said that in practice, no single individual had final responsibility for the CAFR's pension footnote.¹¹⁵³ There is evidence that each of these individuals had reason to believe the City's system for updating footnotes was inadequate, yet the facts reveal that no one individual took the requisite additional steps to ensure information was disclosed accurately and completely. Furthermore, Mr. Phillips and Mr. Graciano had supervisory roles in the Auditor and Comptroller's Office, but acted negligently in discharging their responsibilities.

B. City Manager's Office

Both City Managers Jack McGrory and Michael Uberuaga bear responsibility for the City's disclosure failures. Mr. McGrory was the chief architect of MP-1 which was passed on June 21, 1996.¹¹⁵⁴

¹¹⁴⁷ Interview by the Audit Committee with Rudy Graciano (Apr. 18, 2006); Interview by the Audit Committee with Phil Phillips (June 1, 2006); Interview by Audit Committee with Cecelia San Pedro (Apr. 25, 2006).

¹¹⁴⁸ Interview by the Audit Committee with Cecelia San Pedro (Apr. 25, 2006).

¹¹⁴⁹ Interview by the Audit Committee with Cecelia San Pedro (Apr. 25, 2006).

¹¹⁵⁰ Interview by the Audit Committee with Cecelia San Pedro (Apr. 25, 2006). In fact, at the time of her interview, Ms. San Pedro was not even familiar with the term "corridor funding."

¹¹⁵¹ Interview by the Audit Committee with Rudy Graciano (Apr. 18, 2006).

¹¹⁵² Interview by the Audit Committee with Rudy Graciano (Apr. 18, 2006).

¹¹⁵³ Interview by the Audit Committee with Phil Phillips (June 1, 2006). The agreement entered into between the City and Calderon, Jaham and Osborn stated that CJO, "(unless otherwise specified) will be responsible for footnote preparation." Agreement between the City of San Diego and Calderon, Jaham and Osborn, ¶ 1-5 (Mar. 12, 1998). Nevertheless, as Mr. Graciano acknowledged in his interview, the City had a responsibility to disclose accurate information regarding significant issues to its outside auditors and then to review the footnotes. Interview by Audit Committee with Rudy Graciano (Apr. 18, 2006).

¹¹⁵⁴ See, e.g., Memorandum from Jack McGrory to Distribution (Draft Feb. 29, 1996); Minutes, SDCERS Special Board Meeting at 1-4 (May 2, 1996).

Nonetheless, Mr. McGrory signed bond offerings on August 1, 1996, August 15, 1996, and December 19, 1996, each of which stated that “State legislation requires the City to contribute to SDCERS at rates determined by actuarial valuation,” but did not disclose that the City no longer complied with that State legislation.¹¹⁵⁵ Notwithstanding the misleading nature of the disclosures, Mr. McGrory certified that each OS neither “contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.”¹¹⁵⁶

When Michael Uberuaga became City Manager in 1997, he declined to personally certify the City’s CAFRs or many of the bond offerings, departing from prior practice.¹¹⁵⁷ His decision not to sign his name, however, does not change the fact that he occupied the role of the City’s chief executive officer, and in that capacity was ultimately responsible for the City’s statements to the investing public.¹¹⁵⁸ Like Mr. McGrory before him, Mr. Uberuaga knew that the City was underfunding the pension, and indeed was integrally involved in negotiating and passing MP-2.¹¹⁵⁹ He was similarly familiar with the City’s failure to comply with the Clean Water Act and its grant and loan conditions relating to sewer rates, and the potential

¹¹⁵⁵ \$33,430,000 City of San Diego, California, Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program) Series 1996A (July 16, 1996); \$11,720,000 City of San Diego, California, Refunding Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program, Series 1991) Series 1996B (July 31, 1996); \$68,425,000 Public Facilities Financing Authority of the City of San Diego, Taxable Lease Revenue Bonds, Series 1996A (San Diego Jack Murphy Stadium) (Dec. 12, 2006); City Closing and No-Litigation Certificate, \$33,430,000 City of San Diego, California, Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program) Series 1996A (signed Aug. 1, 1996); City Closing and No-Litigation Certificate, \$11,720,000 City of San Diego, California, Refunding Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program, Series 1991) Series 1996B (signed Aug. 15, 1996); Certificate of the Public Facilities Financing Authority of the City of San Diego, \$68,425,000 Public Facilities Financing Authority of the City of San Diego, Taxable Lease Revenue Bonds, Series 1996A (San Diego Jack Murphy Stadium) (signed Dec. 19, 2006).

¹¹⁵⁶ City Closing and No-Litigation Certificate, \$33,430,000 City of San Diego, California, Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program) Series 1996A (signed Aug. 1, 1996); City Closing and No-Litigation Certificate, \$11,720,000 City of San Diego, California, Refunding Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program, Series 1991) Series 1996B (signed Aug. 15, 1996); Certificate of the Public Facilities Financing Authority of the City of San Diego, \$68,425,000 Public Facilities Financing Authority of the City of San Diego, Taxable Lease Revenue Bonds, Series 1996A (San Diego Jack Murphy Stadium) (signed Dec. 19, 2006).

¹¹⁵⁷ Mr. Uberuaga did sign at least one of the City’s closing certificates certifying to the accuracy of an Official Statement which contained omissions and misstatements regarding the City’s pension and wastewater systems. Closing Certificate of the City, \$17,425,000 City of San Diego 2003 Certificates of Participation (1993 Balboa Park/Mission Bay Refunding) (June 17, 2003).

¹¹⁵⁸ San Diego, Cal., Ordinance No. O-19054 (Apr. 29, 2002).

¹¹⁵⁹ See, e.g., Memorandum from Michael T. Uberuaga, City Manager, to San Diego City Employees’ Retirement System (SDCERS) Board of Administration via Lawrence B. Grissom, Retirement Administrator (June 10, 2002).

liability arising therefrom.¹¹⁶⁰ Mr. Uberuaga acted negligently in failing to inquire as to whether these matters were being properly disclosed to the investing public.

When Mr. Uberuaga declined to sign the City's bond disclosure documents, that task fell to Deputy City Manager for Finance Patricia Frazier and City Treasurer Mary Vattimo. Ms. Frazier and Ms. Vattimo bore responsibility for the financial portion of the bond disclosures. Time and again, in the process of certifying to the accuracy of the disclosures, each either knew of material information demonstrating the inaccuracies, or they recklessly failed to take the necessary steps to gather that information. Ms. Vattimo, as both the City Treasurer and a SDCERS Board member, knew of matters that impacted the City's budget, including MP-1,¹¹⁶¹ the *Corbett* litigation and settlement,¹¹⁶² the drop in the funded ratio in early 2002 as it approached the trigger,¹¹⁶³ and MP-2.¹¹⁶⁴ Ms. Frazier was also aware of issues that affected the City's budget, and did not take the steps reasonably necessary to ensure the disclosures she certified as accurate were indeed so.¹¹⁶⁵

Ms. Frazier signed the Ballpark Bond offering on February 14, 2002, as well as the Fire and Life Safety Facilities Offering on June 28, 2002, and the Old Town Light Rail Transit Extension Offering on May 20, 2003, and Ms. Vattimo signed the City's Tax Anticipation Notes in 2001, 2002, and 2003.¹¹⁶⁶ Each of these offering statements (a) contained misleading representations that "State legislation requires the City to contribute to SDCERS at rates determined by actuarial valuation"; (b) did not discuss MP-1 or MP-2; (c) made no disclosure of the *Corbett* settlement; and (d) did not disclose that the funded ratio in late 2001 and

¹¹⁶⁰ San Diego City Council, Closed Session Report (Jan. 29, 2002).

¹¹⁶¹ See, e.g., Minutes, SDCERS Special Board Meeting at 1, 26 (May 29, 2002) (discussing the trigger under MP-1).

¹¹⁶² See, e.g., Minutes, SDCERS Board Meeting, at 12 (July 11, 2002).

¹¹⁶³ See, e.g., Minutes, SDCERS Board Meeting, at 19 (July 11, 2002).

¹¹⁶⁴ See, e.g., Minutes, SDCERS Board Meeting (July 11, 2002).

¹¹⁶⁵ E-mail from Mary Vattimo to Patricia Frazier (Dec. 19, 2002).

¹¹⁶⁶ Contract of Purchase, \$169,685,000 Public Facilities Financing Authority of the City of San Diego, Lease Revenue Bonds, Series 2002 (Ballpark Project) (signed Feb. 14, 2002); Closing and No Litigation Certificate, Public Facilities Financing Authority of the City of San Diego, Lease Revenue Bonds, Series 2002B (Fire and Life Safety Facilities Project) (signed June 28, 2002); Closing Certificate of the City, \$15,255,000 City of San Diego/MTDB Authority, 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding) (signed May 20, 2003); Certificate of the City, \$73,000,000 City of San Diego, California, 2001-02 Tax Anticipation Notes, Series A (signed July 2, 2001); \$93,200,000 City of San Diego, California, 2002-03 Tax Anticipation Notes, Series A (signed May 29, 2002); Certificate of the City, \$110,900,000 City of San Diego, California, 2003-04 Tax Anticipation Notes, Series A (signed July 1, 2003).

early 2002 was approaching the trigger, or the consequences of hitting the trigger.¹¹⁶⁷ Possessing knowledge that would reveal the false and misleading nature of these statements, or failing to take the necessary steps to gather such information, Ms. Frazier or Ms. Vattimo recklessly certified each of the offerings as follows:

The information contained in the Official Statement with respect to the City is true and correct in all material respects and such information does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.¹¹⁶⁸

Ms. Frazier and Ms. Vattimo are also responsible for recklessly concealing from the investing public both the City's violations of the Clean Water Act and the potential consequences for violations of the City's wastewater grants and loans. Ms. Frazier and Ms. Vattimo knew of these matters before the 1999 Sewer Revenue Bond offering.¹¹⁶⁹ Yet, Ms. Frazier signed the OS, which contained misleading language about the City's compliance, and both Ms. Frazier and Ms. Vattimo signed the Continuing Disclosures for that offering, without making any disclosure of the City's violations.¹¹⁷⁰ The omission in the Continuing Disclosure signed after November 2002 and in the aborted 2003 Sewer Revenue Bond POS is even less

¹¹⁶⁷ \$169,685,000 Public Facilities Financing Authority of the City of San Diego, Lease Revenue Bonds, Series 2002 (Ballpark Project) at A-26 (Feb. 14, 2002); \$25,070,000 Public Facilities Financing Authority of the City of San Diego, Lease Revenue Bonds, Series 2002B (Fire and Life Safety Facilities Project) at A-31 (June 12, 2002); \$15,255,000 City of San Diego/MTDB Authority, 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding) at A-28 – A-29 (May 20, 2003); \$73,000,000 City of San Diego, California, 2001-02 Tax Anticipation Notes, Series A at A-28 – A-29 (June 6, 2001); \$93,200,000 City of San Diego, California, 2002-03 Tax Anticipation Notes, Series A at A-31 (June 4, 2002); \$110,900,000 City of San Diego, California, 2003-04 Tax Anticipation Notes, Series A at A-32 (June 16, 2003).

¹¹⁶⁸ Closing Certificate of the City, \$15,255,000 City of San Diego/MTDB Authority, 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding) (signed May 20, 2003). In other offerings, either Ms. Frazier or Ms. Vattimo certified to language that is almost identical to that contained in the San Diego Old Town Light Rail Transit Extension Refunding. Contract of Purchase, \$169,685,000 Public Facilities Financing Authority of the City of San Diego, Lease Revenue Bonds, Series 2002 (Ballpark Project) (signed Feb. 14, 2002); Closing and No Litigation Certificate, Public Facilities Financing Authority of the City of San Diego, Lease Revenue Bonds, Series 2002B (Fire and Life Safety Facilities Project) (signed June 28, 2002); Certificate of the City, \$73,000,000 City of San Diego, California, 2001-02 Tax Anticipation Notes, Series A (signed July 2, 2001); Certificate of the City, \$110,900,000 City of San Diego, California, 2003-04 Tax Anticipation Notes, Series A (signed July 1, 2003); *but see* \$93,200,000 City of San Diego, California, 2002-03 Tax Anticipation Notes, Series A (signed May 29, 2002) (omitting a statement that certifies as to the accuracy of the disclosure).

¹¹⁶⁹ E-mail from Dennis Kahlie to George Loveland, Patricia Frazier, and Mary Vattimo (Nov. 3, 1999); E-mail from Kelly Salt to Mary Vattimo cc to Dennis Kahlie and Les Girard (Jan. 25, 1999); Memorandum from Patricia T. Frazier, Financial and Technical Services Manager, to Coleman Conrad, Deputy City Manager (July 3, 1997).

¹¹⁷⁰ Cheryl Mercer, Continuing Disclosure Annual Report (Feb. 28, 2001); \$315,410,000 Public Facilities Financing Authority of the City of San Diego, Sewer Revenue Bonds, Series 1999A and Series 1999B, at 56 (March 2, 1999).

excusable.¹¹⁷¹ Ms. Frazier was present for Mr. Kahlie's closed session presentation.¹¹⁷² And both Ms. Frazier and Ms. Vattimo received an e-mail from Mr. Kahlie on February 1, 2002, with the following warning:

[T]he first thing that will happen when SWRCB finds out the council doesn't care to live up to its contractual obligations with respect to ratesetting is that these applications [\$41 million in new SRF grants] will be disapproved. . . As I see it, failure to recover costs proportionate to use puts us in breach of a total of eight previously executed grant/loan contracts worth \$410 million. As to when the hammer drops, it could literally happen at any time after SWRCB concludes the City has begun to drag its feet.¹¹⁷³

Both Ms. Frazier and Ms. Vattimo also received Mr. Kahlie's Salient Points Memo and Ms. Vattimo, with Kelly Salt, co-authored the November 14, 2002 Memorandum to the Mayor and City Council.¹¹⁷⁴ Both could not have been clearer as to the City's violations and potential liability. Yet both Ms. Frazier and Ms. Vattimo signed the Sewer Revenue Bond Continuing Disclosure in March 2002, and then were responsible for presenting the 2003 Sewer Revenue Bond POS to the City Council, without any disclosure of the City's violations or its potential liability.¹¹⁷⁵ Given their knowledge of the facts and their responsibility for disclosing material facts to the investing public, their omission is at best reckless and could reasonably be seen as intentional.

Dennis Kahlie's responsibility for failing to disclose the City's violations and potential liability to the investing public must also be noted. More than anyone, Mr. Kahlie was a vocal and persistent reminder that the City needed to comply with the law and its contractual obligations. Given that, it is difficult to understand why Mr. Kahlie never informed the City's bond disclosure counsel, Paul Webber, of these matters when he attended drafting meetings to review and revise the Sewer Revenue Bond Preliminary Official Statements.¹¹⁷⁶ In his interview, Mr. Kahlie asserted that he did tell Mr. Webber, but this assertion is

¹¹⁷¹ Public Facilities Financing Authority of the City of San Diego Subordinated Sewer Revenue Bonds, Series 2003A and Series 2003B, Draft Official Statement (June 20, 2003); Cheryl Mercer, Continuing Disclosure Annual Reports (March 4, 2002).

¹¹⁷² San Diego City Council Closed Session Report (Jan. 29, 2002).

¹¹⁷³ E-mail from Dennis Kahlie to Mary Vattimo and Patricia Frazier (Feb. 1, 2002).

¹¹⁷⁴ Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002); E-mail from Dennis Kahlie to Ed Ryan, George Loveland, Kelly Salt, Mary Vattimo, Patricia Frazier, and Richard Mendes, attaching Salient Points Sewer Cost of Service Compliance Issue (Nov. 13, 2002).

¹¹⁷⁵ Minutes, San Diego City Council Meeting at 16 (June 30, 2003); Cheryl Mercer, Continuing Disclosure Annual Reports (March 4, 2002).

¹¹⁷⁶ E-mail from Paul S. Maco to Paul Webber (Feb. 12, 2004); Interviews by the Audit Committee with Paul Webber (May 11, 2006 and May 15, 2006).

undercut for several reasons.¹¹⁷⁷ First, Mr. Webber and other participants in those meetings did not recall the City's violation or potential liability being discussed.¹¹⁷⁸ Second, Mr. Webber's denial that he was informed of the violation is substantially corroborated by his reaction when Councilmember Frye informed him of the City's lack of compliance with sewer rate requirements in February 2004.¹¹⁷⁹ He immediately advised the City that the matter must be disclosed.¹¹⁸⁰ Third, in April 2004, Mr. Kahlie participated with Mary Vattimo in drafting a memo entitled "SWRCB Grant/Loan Obligation Disclosure Issue," which purported to answer the question, "Should Wastewater Bond/Disclosure Counsel have been aware of the situation with respect to SWRCB compliance?"¹¹⁸¹ This document was apparently created at the direction of Ms. Vattimo in response to allegations that City staff improperly withheld information from outside counsel.¹¹⁸² While Mr. Kahlie noted that disclosure counsel should have been familiar with grant and loan programs and could reasonably be expected to be aware of rate structure obligations, he conspicuously did not assert that Mr. Webber knew because he told him of the issue.¹¹⁸³ Mr. Kahlie's failure to make this claim in his April 2004 memo is strong proof that Mr. Kahlie never brought the City's sewer rate violations to Mr. Webber's attention.

Not only is Mr. Kahlie responsible for the misleading omissions in the City's bond issuances, he, along with then-Deputy Director of the MWWd William Hanley, also improperly concealed facts regarding the City's violations from a bond rating agency. In preparing to rate the 2003 Sewer Revenue Bond, a representative of the Fitch rating agency posed the following question to Mr. Hanley on June 27, 2003: "I understand the state board must 'approve' MWWd's rate structure. Is this correct and if so, has the

¹¹⁷⁷ Interview by the Audit Committee with Dennis Kahlie (Oct. 18, 2005).

¹¹⁷⁸ Interview by the Audit Committee with Eric Adachi (Oct. 21, 2005); Interviews by the Audit Committee with Paul Webber (May 11, 2006 and May 15, 2006); Interview by the Audit Committee with Ed Wochaski (Apr. 20, 2006); *but see* Interview by the Audit Committee with Clay Bingham (April 19, 2006). During his interview, Mr. Bingham stated that Mr. Webber knew that the City was not in compliance with the State's requirements because Mr. Webber had attended meetings where strength-based billing was discussed. However, Mr. Bingham also said that the issue of noncompliance was not discussed at these meetings and he did not recall Mr. Webber being told of the City's noncompliance. Mr. Bingham's seemingly contradictory recollection of discussions held with Mr. Webber, coupled with the fact that the others at the same meetings do not recall Mr. Webber being informed of either the City's noncompliance or the City's failure to implement strength-based billing, undermines Mr. Bingham's recollection of events.

¹¹⁷⁹ E-mail from Paul S. Maco to Paul Webber (Feb. 12, 2004).

¹¹⁸⁰ E-mail from Paul S. Maco to Paul Webber (Feb. 12, 2004).

¹¹⁸¹ Dennis Kahlie, SWRCB Grant/Loan Obligation Disclosure Issue (Apr. 26, 2004); Interview by the Audit Committee with Dennis Kahlie (Oct. 18, 2005).

¹¹⁸² Interview by the Audit Committee with Dennis Kahlie (Oct. 18, 2005).

¹¹⁸³ Dennis Kahlie, SWRCB Grant/Loan Obligation Disclosure Issue (Apr. 26, 2004).

board ever not approved or had any significant input into MWWd's rate structure?"¹¹⁸⁴ Mr. Hanley and Mr. Kahlie, working together, provided the following misleading response:

Clean Water Grant and State Revolving Fund Loan agreements provide for the approval of rate structures by the State Water Resources Control Board (Board). The primary objective of the approval process is to insure that the system of rates and charges in use recovers system costs from users on a basis proportionate to use. The Board has periodically provided input to MWWd concerning its rate structure and changes thereto, but has never disapproved the structure or any component thereof.¹¹⁸⁵

Mr. Kahlie and Mr. Hanley did not tell Fitch that the City's rate structure had for years violated the law and its grant and loan covenants – facts that were patently material to Fitch. In his interview, Mr. Hanley candidly accepted responsibility for the omission.¹¹⁸⁶ He admitted that he "sidestepped" the issue because he feared full disclosure would delay the bond issuance and, in turn, the construction of important sewer projects.¹¹⁸⁷ Notwithstanding the fact that this omission may have been motivated by a desire to help the City, Mr. Kahlie's and Mr. Hanley's intentional effort to mislead a bond rating agency through omission of a material fact was plainly improper.

C. City Attorney's Office

The City Attorney's Office failed the City and must bear significant responsibility for the City's disclosure failures. The City Attorney's Office assumed the role of gatekeeper with respect to the City's statements to the investing public. To provide the investing public with comfort that the City's disclosures were accurate and complete, each offering was accompanied by a certification from a representative of the City Attorney's Office, which made the following (or similar) representation:

[T]he information contained in the Official Statement . . . is accurate in all material respects and does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respects.¹¹⁸⁸

¹¹⁸⁴ E-mail from Mark Capell to Bill Hanley (June 27, 2003).

¹¹⁸⁵ E-mail from Bill Hanley to Mark Capell, Dennis Kahlie, and Eric Adachi (July 1, 2003); E-mail from Dennis Kahlie to Ted Bromfield, Eric Adachi, Clay Bingham, and Bill Hanley (July 1, 2003).

¹¹⁸⁶ Interview by the Audit Committee with Bill Hanley (Apr. 25, 2006).

¹¹⁸⁷ Interview by the Audit Committee with Bill Hanley (Apr. 25, 2006).

¹¹⁸⁸ Letter signed by Kelly J. Salt, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to MBIA Insurance Company, Public Facilities Financing Authority of the City of San Diego, and City of San Diego (June 28, 2002). Between December 1996 and July 2003, each of these certifications was prepared by a deputy in the City Attorney's Office on behalf of City Attorney Casey Gwinn. The language in these letters certifying to the accuracy of the

Yet, in signing its own certifications, the City Attorney's Office appears to have relied exclusively on the certifications of others, without doing its own independent verification of the accuracy of the disclosures.¹¹⁸⁹ For example, steps were taken by the City Attorney's Office to ensure Mr. Ryan certified to the CAFR's accuracy, but no steps were taken by the City Attorney's Office to actually review the CAFR disclosures.¹¹⁹⁰

The City Attorney's Office was involved at all junctures with the City's operations. The Office was aware of the funding scheme proposed under MP-1, when then-City Attorney John Witt recused himself on behalf of the City Attorney's Office in light of his pending retirement.¹¹⁹¹ Notably, however, he did so after having previously warned the City of the dangers of SDCERS having any role in conferring benefits.¹¹⁹² Loraine Chapin, a Deputy City Attorney at the time MP-1 was proposed, nonetheless continued to advise SDCERS in connection with the proposal, attending Board meetings at which MP-1 was discussed at length. At one such meeting, Ms. Chapin opined that, in her view, the City Charter would have to be amended to accommodate the proposal as it related to retiree health benefits.¹¹⁹³ The Charter was later changed for this purpose.¹¹⁹⁴ Yet there is no evidence Ms. Chapin identified the central illegality of MP-1 under either the Charter or the Municipal Code, and both she and Assistant City Attorney John Kaheny were silent on this point when they attended the Board meeting at which MP-1 was formally adopted.¹¹⁹⁵

Official Statement varied only slightly over the relevant period, affirming in each case that, to the knowledge of the City Attorney's Office, the offering document did not contain any material misrepresentations or omissions of fact that would make the document misleading. *See, e.g.*, Letter signed by Kelly J. Salt, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to Bank of America Securities, Inc., Public Facilities Financing Authority of the City of San Diego, and City of San Diego (Dec. 19, 1996); Letter signed by Theresa C. McAteer, Deputy City Authority Counsel, on behalf of Casey Gwinn, Authority Counsel, to Merrill & Co., Convention Center Expansion Financing Authority, and City of San Diego (Sept. 17, 1998); Letter signed by Jacqueline Lindsay, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to Zions First National Bank and First Albany Corporation (July 1, 2002); Letter signed by Kelly J. Salt, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to City of San Diego/MTDB Authority, Banc of America Securities LLC, Ambac Assurance Corporation, and Stradling Yocca Carlson & Rauth (May 20, 2003); Letter signed by Kelly J. Salt, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to City of San Diego, Citigroup Global Markets Inc., Ambac Assurance Corporation, and Stradling Yocca Carlson & Rauth (June 17, 2003); Letter signed by Richard A. Duvernay, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to Goldman, Sachs & Co. and Stradling Yocca Carlson & Rauth (July 1, 2003).

¹¹⁸⁹ Interview by the Audit Committee with Theresa McAteer (June 16, 2006).

¹¹⁹⁰ Interview by the Audit Committee with Theresa McAteer (June 16, 2006).

¹¹⁹¹ Memorandum from City Attorney John Witt to Larry B. Grissom, Retirement Administrator (Mar. 10, 1992).

¹¹⁹² Letter from John W. Witt, City Attorney, to the Board of Administration for the San Diego City Employees' Retirement System (Apr. 23, 1996).

¹¹⁹³ Minutes, SDCERS' Retirement Board of Administration Special Workshop at 8 (June 11, 1996).

¹¹⁹⁴ San Diego City Council Resolution R-288173 (Dec. 9, 1996).

¹¹⁹⁵ Minutes, SDCERS Retirement Board Minutes at 1, 31 (June 21, 1996).

In the spring of 2000, the City Attorney's Office, then under City Attorney Casey Gwinn, was involved in the *Corbett* settlement, and in particular was aware that the liabilities were to be treated as contingent.¹¹⁹⁶ Thereafter, the City Attorney's Office played a role in the City's meet and confer labor negotiation process, attending closed sessions where the impact of the City's funded ratio on its contribution rates was discussed.¹¹⁹⁷ In fact, in April 2002 Ms. Webster wrote an e-mail to Deputy City Attorneys Elmer Heap and Michael Rivo asking whether it would "take a vote of the [SDCERS] members to remove the trigger which was in the Manager's proposal? (If it was tied to benefit increases I think it would pass... no matter what a vote [sic] lengthens the timeline to remove the trigger)."¹¹⁹⁸ Despite Ms. Webster's explicit proposal of a *quid pro quo* arrangement to remove the trigger, Mr. Heap and Mr. Rivo apparently raised no concerns, and this was the precise illegality that was to come. Mr. Heap and Mr. Rivo subsequently routinely received additional information with respect to the MP-2 proposal and its contingent nature, as the proposal continued to be discussed and ultimately adopted.¹¹⁹⁹ By August 2002, Mr. Rivo received information about the likelihood of the City hitting the trigger, and he knew there were insufficient Surplus Earnings to cover the 13th Check.¹²⁰⁰ In an e-mail regarding a Council resolution to pay the 13th Check despite the lack of Surplus Earnings to cover the payment, he and others were asked by Ms. Webster to "remind" the City Council "what the funding ratio is and how when it gets below a certain level it will trigger higher payments from the City."¹²⁰¹

Notwithstanding its knowledge on each of the foregoing points, the City Attorney's Office continued to certify the accuracy of disclosures which omitted or misstated the pension funding mechanism, the nature of the *Corbett* liability, and the looming "higher payments" by the City at the breach of the trigger.

¹¹⁹⁶ Memorandum from Bruce A. Herring, Deputy City Manager, to Honorable Mayor and Councilmembers cc to Michael T. Uberuaga, City Manager, Larry Grissom, Retirement Administrator, Ed Ryan, City Auditor and Controller, Casey Gwinn, City Attorney, and David Hopkins, Hillyer & Irwin (Apr. 13, 2000).

¹¹⁹⁷ San Diego City Council, Closed Session Report (May 6, 2002); San Diego City Council, Closed Session Report (Mar. 18, 2002).

¹¹⁹⁸ E-mail from Terri Webster to Elmer Heap and Michael Rivo cc to Cathy Lexin (Apr. 17, 2002).

¹¹⁹⁹ E-mail from Terri Webster to Ed Ryan and Dan Kelley cc to Bob Lawrence, Bob Wilson, and Elmer Heap (May 21, 2002); E-mail from Holly Reed-Falk to Bruce Herring, Cathy Lexin, Lawrence Grissom, Michael Rivo, Paul Barnett, and Terri Webster cc to Dan Kelley and Sharon Marshall (May 21, 2002); Minutes, SDCERS Special Board Meeting at 1, 35-36 (May 29, 2002); Minutes, SDCERS Board Meeting at 1, 16-32 (June 21, 2002).

¹²⁰⁰ E-mail from Terri Webster to Loraine Chapin, Lawrence Grissom, Michael Rivo, and Cathy Lexin cc to Ed Ryan (Aug. 30, 2002).

¹²⁰¹ E-mail from Terri Webster to Loraine Chapin, Lawrence Grissom, Michael Rivo, and Cathy Lexin cc to Ed Ryan (Aug. 30, 2002).

Instead of acknowledging the information it held to the contrary, the Office made these certifications apparently wholly in reliance on others' certifications of accuracy.¹²⁰²

Members of the City Attorney's Office also knew that the City's sewer rates violated the Clean Water Act and its grant and loan conditions, the potential consequence of which was the required repayment of hundreds of millions of dollars.¹²⁰³ Although members of the City Attorney's Office participated in the preparation of bond offering documents, and in connection with that process met with Mr. Webber, there is no evidence that any member of the City Attorney's Office ever broached the topic of the City's compliance with him.¹²⁰⁴ The City Attorney's Office was also tasked with sole responsibility of ensuring the accuracy of the very section in the OS in which the misleading statement was repeated time and again.¹²⁰⁵

Of all of the members of the City Attorney's Office, Kelly Salt bears the most responsibility for the City's failure to disclose that it was violating both the provisions of its agreements with the State as well as a federal law. Ms. Salt was the City's liaison to outside counsel and was responsible for keeping him informed of all relevant facts.¹²⁰⁶ By 1999, Ms. Salt was assigned to update the "regulatory requirements" section of the OS and to make sure it was accurate.¹²⁰⁷ In 2002, she drafted a memo describing in great detail that the City had been violating the Clean Water Act for "much of the time" it had been receiving its grants and loans.¹²⁰⁸ She also wrote that as a result of violating its grant and loan covenants, the City could be required to repay immediately up to \$370 million.¹²⁰⁹ While possessing this knowledge and carrying principal responsibility for disclosure, she sat in meeting after meeting with Mr. Webber without mentioning it. Ms.

¹²⁰² Interview by the Audit Committee with Theresa McAteer (June 16, 2006).

¹²⁰³ Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002); Facsimile from Kelly Salt to Dennis Kahlie (Nov. 16, 1999).

¹²⁰⁴ E-mail from Paul Maco to Paul Webber (Feb. 12, 2004); Interview by the Audit Committee with Paul Webber (May 11, 2006); Interview by the Audit Committee with Ted Bromfield (April 27, 2006); Interview by the Audit Committee with Kelly Salt (Oct. 17, 2005).

¹²⁰⁵ Required Items for Wastewater System Preliminary Official Statement (Dec. 2, 1998); Interview by the Audit Committee with Ted Bromfield (April 27, 2006).

¹²⁰⁶ Interview by the Audit Committee with Kelly Salt (Oct. 17, 2005); Interview by the Audit Committee with Ted Bromfield (April 27, 2006). Kelly Salt terminated her interview prior to its completion, and despite repeated requests, she refused to meet with the Audit Committee again.

¹²⁰⁷ Required Items for Wastewater System Preliminary Official Statement (Dec. 2, 1998).

¹²⁰⁸ Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002).

¹²⁰⁹ Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002).

Salt does not claim to have told Mr. Webber about the City's noncompliance, and only recalled telling him that the City was "bringing forward a cost of service study" for the State's approval.¹²¹⁰ Ms. Salt certified as accurate various offering documents including the official statements for the Fire and Life Safety Facilities Bonds on June 28, 2002; the Old Town Light Rail Extension Refunding Bonds on May 20, 2003; and the Balboa Park/Mission Bay Park Refunding Bonds on June 17, 2003.¹²¹¹ None of these official statements disclosed what Ms. Salt herself characterized as the City's significant potential litigation for a liability measured in the hundreds of millions of dollars.

Ms. Salt now says she had considered at the time whether the facts presented a disclosure issue and had concluded they did not.¹²¹² She claimed that her belief was that "there was nothing to disclose" since the agreements' notice and cure provisions had not been triggered.¹²¹³ Ms. Salt's claim that she relied on the notice and cure provision in reaching this conclusion, however, is undercut by the fact that she did not find the provision significant enough to even mention in her seven-page memo to the Mayor and Council.¹²¹⁴ In any event, the implications of the notice and cure provision on the City's disclosure obligations are wholly beside the point since Ms. Salt also concluded in her memo that the City was violating a federal law, which

¹²¹⁰ Interview by the Audit Committee with Kelly Salt (Oct. 17, 2005).

¹²¹¹ Letter signed by Kelly J. Salt, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to MBIA Insurance Company, Public Facilities Financing Authority of the City of San Diego, and City of San Diego (June 28, 2002); Letter signed by Kelly J. Salt, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to City of San Diego/MTDB Authority, Banc of America Securities LLC, Ambac Assurance Corporation, and Stradling Yocca Carlson & Rauth (May 20, 2003); Letter signed by Kelly J. Salt, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to City of San Diego, Citigroup Global Markets Inc., Ambac Assurance Corporation, and Stradling Yocca Carlson & Rauth (June 17, 2003). Ms. Salt also signed the City Attorney's Office's certification letter for the February 2002 Ballpark Bonds offering. Notably, the language certifying as to the accuracy of the offering document in the Ballpark Bonds certification was more limited as compared to the others. The certification only affirmed that, to the knowledge of the City Attorney's Office, there were no potential or pending legal actions or investigations that would "contest[] in any way the completeness or accuracy of the Offering Document." Letter signed by Kelly J. Salt, Deputy City Attorney, on behalf of Casey Gwinn, City Attorney, to Public Facilities Financing Authority of the City of San Diego, City of San Diego, and Merrill Lynch, Pierce, Fenner & Smith Incorporated (Feb. 15, 2002).

¹²¹² Interview by the Audit Committee with Kelly Salt (Oct. 17, 2005).

¹²¹³ Interview by the Audit Committee with Kelly Salt (Oct. 17, 2005). Ms. Salt's claim is somewhat corroborated by former Deputy City Attorney Ted Bromfield who recalls that Ms. Salt told him that disclosure was unnecessary because the City had not received a notice of default from the SWRCB. Mr. Bromfield, however, also stated that he gave no consideration to issues pertaining to disclosure of compliance with the sewer rate requirements. Interview by the Audit Committee with Ted Bromfield (Apr. 27, 2006).

¹²¹⁴ Kelly Salt did, however, reference the provision in an earlier draft of the memo in which she also stated that the State had not provided any written notice of termination. This section was ultimately removed from the final version. Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002); Memorandum from Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Oct. 11, 2002).

itself should have been considered material.¹²¹⁵ Given Ms. Salt's knowledge of the facts and her direct responsibility for disclosing them, she acted recklessly in discharging her duties, both in her failure to communicate pertinent facts to bond counsel, and in failing to make accurate the misleading disclosure language.

Like Kelly Salt, Deputy City Attorney Ted Bromfield was also responsible for the City's non-disclosure of material facts to the investing public. Although he was not directly charged with the responsibility for updating the Regulatory Requirements section of the 2003 POS like Ms. Salt was, he reviewed and edited it.¹²¹⁶ Indeed, he revised a single word in the paragraph containing the misleading language about the City's rate structure, without changing the misleading language itself.¹²¹⁷ He was well aware of the City's noncompliance by the time he made these changes, and he had been since at least 1999.¹²¹⁸ In November 1999, he authored a memo to Councilmember Kehoe stating: "Since the City must comply with federal and state guidelines by virtue of its grant funding, the [COSS] recommends a revised rate structure to include organic loading for all wastewater users."¹²¹⁹

¹²¹⁵ Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002); SEC Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45150 at *45152 (Aug. 19, 1999) ("Among the considerations that may well render material a quantitatively small misstatement of a financial statement item are ...whether the misstatement affects the registrant's compliance with regulatory requirements[;] whether the misstatement affects the registrant's compliance with loan covenants or other contractual requirements[;]...whether the misstatement involves concealment of an unlawful transaction."). Case law supports the proposition that the failure to disclose a statutory or regulatory violation – aside from in the securities law context – may be considered a material omission under the federal securities laws anti-fraud provisions. See, e.g., *Roeder v. Alpha Indus., Inc.*, 814 F.2d 22, 25-26 (1st Cir. 1987) (concluding that "reasonable investors might have considered defendants' alleged illegal conduct to be important information they would want to have before they made their investment decisions," noting in particular that "[e]ven small illegal payments can seriously endanger a corporation's business, especially when it relies heavily on government contracts, because such activity can result in the corporation being barred from obtaining future government contracts or subcontracts."); *SEC v. Jos. Schlitz Brewing Co.*, 452 F. Supp. 824, 830 (E.D. Wisc. 1978) (concluding that investors may have found the defendant's alleged marketing practices and tax law violations to be material omissions, noting the SEC's position that, among other things, "the allegedly illegal practices engaged in by Schlitz and its customers posed a substantial threat to their licenses to sell beer licenses upon which many of the operations of Schlitz and its customers depend."). The Ninth Circuit has indicated that illegal conduct of an issuer may have a bearing on the materiality of an omission. See *Shawmut Bank, N.A. v. Kress Assocs.*, 33 F.3d 1477, 1485-86 (9th Cir. 1994) (finding that plaintiffs had not demonstrated the materiality of an omitted fact in a bond offering disclosure statement, relying primarily on the fact that "[b]ecause [plaintiff] has articulated *no other criterion of relevance*, its failure to allege that the prior transactions were illegal is fatal.").

¹²¹⁶ Memorandum from City Attorney to Eric Adachi, City Rate Analyst, Jenna Magan, Bond Counsel, and Bill Hanley, MWWD Deputy Director (Apr. 24, 2003). Mr. Bromfield acknowledged that he reviewed the 2003 POS but said he did so, "editorially, not substantively." Interview by the Audit Committee with Ted Bromfield (April 27, 2006).

¹²¹⁷ Memorandum from City Attorney to Eric Adachi, City Rate Analyst, Jenna Magan, Bond Counsel, and Bill Hanley, MWWD Deputy Director (Apr. 24, 2003).

¹²¹⁸ Facsimile from Kelly Salt to Dennis Kahlie (Nov. 16, 1999), with attached Memorandum from Ted Bromfield, Deputy City Attorney, to Christine Kehoe, Councilmember, District 3 (Draft Nov. 1999). Interview by the Audit Committee with Ted Bromfield (Apr. 27, 2006).

¹²¹⁹ Facsimile from Kelly Salt to Dennis Kahlie (Nov. 16, 1999), with attached Memorandum from Ted Bromfield, Deputy City Attorney, to Christine Kehoe, Councilmember, District 3 (Draft Nov. 1999).

Mr. Bromfield also received an e-mail containing the draft responses to the five questions that Fitch posed to the MWWD, including the one about the status of the SWRCB's approval of the City's rate structure.¹²²⁰ Mr. Bromfield had been asked to draft three of the five responses to Fitch and said that he reviewed only those, none of which related to SWRCB approval.¹²²¹ Nonetheless, this constitutes another instance where Mr. Bromfield had the opportunity to review and correct misrepresentations about the City's compliance, but negligently failed to do so.

Assistant City Attorney Leslie Girard is also responsible for the City's omission of material facts from its disclosures. He not only had knowledge of, but was an active participant, in at least two central events relating to sewer rate compliance. He attended the January 29, 2002 closed session in his capacity as minute keeper, and he reviewed and commented on Kelly Salt's November 14, 2002 Memo.¹²²² In addition, he also responded to Councilmember Frye's concern about the propriety of discussing the sewer rate issue in closed session, concluding that such discussion was appropriate in light of the City's significant exposure to litigation.¹²²³

Given his knowledge of and sensitivity to this litigation risk, Mr. Girard should have recognized that there was a disclosure issue. While Mr. Girard had no direct involvement with sewer revenue bond offerings (unlike both Ms. Salt and Mr. Bromfield), he did participate in the Bryan Cave presentation to Council regarding disclosure obligations just months before he attended the January 29, 2002 closed session.¹²²⁴ Having just gone through the process of educating others about their disclosure obligations, and therefore being reminded of the requirements himself, Mr. Girard did not exercise due care when he failed to ensure the disclosure of the City's noncompliance and violation of a federal law.

As the top official in the City Attorney's Office – which certified to the accuracy of incomplete and misleading disclosures – City Attorney Casey Gwinn negligently performed his disclosure responsibilities to the City, and failed adequately to supervise the other attorneys under his supervision.

¹²²⁰ E-mail from Dennis Kahlie to Ted Bromfield, Eric Adachi, Clay Bingham and Bill Hanley (July 1, 2003).

¹²²¹ E-mail from Bill Hanley to Ted Bromfield (June 30, 2003); Interview by the Audit Committee with Ted Bromfield (April 27, 2006).

¹²²² E-mail from Kelly Salt to Dennis Kahlie, Les Girard and Patricia Frazier (Nov. 6, 2002); Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Oct. 31, 2002); San Diego City Council, Closed Session Report (Jan. 29, 2002); Interview by the Audit Committee with Leslie Devaney (April 18, 2006).

¹²²³ Memorandum from Leslie J. Girard, Assistant City Attorney, to Council Member Donna Frye (Nov. 18, 2002).

¹²²⁴ Interview by the Audit Committee with Les Girard (Oct. 19, 2005).

D. City Council's Responsibility for the City's Disclosure Failures: Pension and Wastewater

In addition to those with direct responsibility for drafting the City's financial disclosures, the Mayor and City Council must also bear responsibility for the City's failure to disclose information about the City's looming pension crisis and potential liability for the City's non-compliant sewer rates.¹²²⁵ Elected officials who authorize the issuance of municipal securities have an obligation to satisfy themselves that the disclosures made in connection with those issuances accurately disclose significant risks to the investing public. In the wake of the bankruptcy of Orange County, the SEC issued a well publicized Report of Investigation "to emphasize the responsibilities under the federal securities laws of local government officials who authorize the issuance of municipal securities and related disclosure documents and the critical role such officials play with respect to the representations contained in the Official Statements for those securities."¹²²⁶ The Report stated:

[T]he antifraud provisions of the federal securities laws impose responsibilities on a public official who authorizes the offer and sale of securities. A public official who approves the issuance of securities and related disclosure documents may not authorize disclosure that the public official knows to be materially false or misleading; nor may the public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading.

The SEC did not provide a comprehensive list of the steps that public officials must undertake in the face of such information. Rather, in the case of the Orange County Supervisors, who had knowledge of facts calling into question the County's ability to repay the securities it issued, the SEC specified that "such steps could

¹²²⁵ With regard to the City's looming pension crisis, Mr. Aguirre concluded that there was "substantial evidence consistent with a finding that the Mayor and City Council engaged in *civil* violations of federal securities laws," as they "recklessly disregarded facts indicating a risk that the disclosures might be misleading." City Attorney Michael J. Aguirre, Interim Report No. 2 Regarding Possible Abuse, Illegal Acts or Fraud by City of San Diego Officials at 106-07 (Feb. 9, 2005) (emphasis in original). Mr. Aguirre briefly assessed the responsibility of individual Council members for disclosure failures, creating a continuum of culpability based on their time in office and legal background. Mr. Aguirre concluded that Mayor Murphy and Councilmember Peters, each of whom was Phi Beta Kappa, held law degrees and graduated from esteemed universities, were most responsible for the disclosure failures, whereas Councilmember Frye, who held "no advanced degrees in business or law" and opposed some of the benefit increases, fell on the other end of the spectrum. *Id.* at 108-09. With regard to the City's non-compliant sewer rates, Mr. Aguirre found there was "substantial evidence consistent with a finding that members of the City Council and other City officials acted knowingly or recklessly to approve related disclosures to investors without taking steps to prevent the dissemination of materially false or misleading information." Michael J. Aguirre, Wastewater Interim Report No. 1, City of San Diego Officials' Failure to Disclose Material Facts in Connection with the Offer and Sale of Wastewater Bonds and Related Improper Activity at 20 (Sept. 15, 2005). Yet he did not describe the evidence supporting this conclusion nor did he identify by name those individuals whose conduct purportedly rose to the level of "knowing" or "reckless." *Id.* at 17.

¹²²⁶ Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *1 (Jan. 24, 1996) (hereinafter, the "Orange County Report").

have included becoming familiar with the disclosure documents and questioning the issuer's officials, employees or other agents about the disclosure of those facts."¹²²⁷

Not only was the Orange County Report the subject of news reports that should have been followed closely by any leader of municipal government,¹²²⁸ its lessons were directly communicated to San Diego's Mayor and City Council both orally and in writing. In advance of the Council's approval of the Ballpark Bonds, the Mayor and City Council members received the Bryan Cave Memo, which warned that Council members "cannot simply 'rubber stamp' the [disclosure] document."¹²²⁹ This memorandum was followed by an oral presentation by Mr. Boltz, who repeated his description of Council members' duties under the securities laws.¹²³⁰

Although the advice provided in the Bryan Cave Memorandum clearly described the Council's duties with respect to bond issuances, some of the Councilmembers who were interviewed explained that they were not given a sufficient opportunity to read it. They said it was provided to them at the beginning of the closed session and retrieved at the end.¹²³¹ The Council members recalled being told that the memorandum and presentation were given to them in order to bolster a defense to potential securities litigation that could be brought in an effort to derail the Ballpark plans, rather than a description of their obligations under the securities laws.¹²³² They recalled being told to read the Ballpark POS and ask questions in open session before approving the Ballpark Bonds, to show that they were exercising diligence.¹²³³ Some

¹²²⁷ Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *9 (Jan. 24, 1996).

¹²²⁸ Michael Utley, *County Charged with Fraud in Landmark Action by SEC*, The Bond Buyer, Jan. 25, 1996, at 1; Michael Utley, *SEC Reprimand Has the Potential to Jolt Local Officials Nationwide*, The Bond Buyer, Jan. 26, 1996, at 1; *SEC Actions in Orange County Investigation: Misstatements and Omissions Alleged in the Disclosure Materials for Offerings of More than \$2.1 Billion in Municipal Securities*, Government Finance Review, April 1996, at 13; Leslie Wayne, *Orange County Settlement Sends a Signal from S.E.C.*, N.Y. Times, Jan. 25, 1996, at D4; Debora Vrana, *Dire Straits: SEC Dragnet Has Some California Towns in a Panic*, L.A. Times, Mar. 24, 1996, at D1.

¹²²⁹ Memorandum from Leslie J. Girard, Assistant City Attorney, to Honorable Mayor and Members of the City Council (Nov. 6, 2001), with attached Letter from Gerald E. Boltz and Matthew D. Anhut, Bryan Cave LLP, to Leslie J. Girard, Esq. (Oct. 29, 2001).

¹²³⁰ Interview by the Audit Committee with Matthew Anhut (May 25, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

¹²³¹ Interview by the Audit Committee with Toni Atkins (Apr. 28, 2006); Interview by the Audit Committee with Mayor Richard Murphy (May 2, 2006).

¹²³² Interview by the Audit Committee with Toni Atkins (Apr. 28, 2006); Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006); Interview by the Audit Committee with Mayor Richard Murphy (May 2, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

¹²³³ Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

recalled that Mr. Girard suggested specific questions they should ask and admonished them to be careful not to stray far from that list.¹²³⁴ Most of the Council members stated that they believed that the memorandum and oral presentation were specifically applicable to the Ballpark offering, rather than a comprehensive lesson in their disclosure oversight obligations going forward.¹²³⁵

The Council members' recollections of the Bryan Cave Memorandum and oral presentation, however, are undercut by several facts. As an initial matter, the language of the memorandum broadly describes the Council's obligations in authorizing bond issuances; it does not limit the description of the Council's legal obligations to any one issuance. With respect to what was communicated by Mr. Boltz in the closed session presentation, both Messrs. Girard and Anhut recalled that Mr. Boltz generally explained the duties imposed upon the Council by the securities laws.¹²³⁶ Mr. Anhut recalled hearing that, according to Mr. Girard, Council members had asked questions suggesting they had been somewhat shaken by Mr. Boltz's presentation. And, it only makes sense that Mr. Boltz would have advised the Council of its obligations in rather forceful tones. Mr. Boltz, who recently passed away, had served as Regional Director of the SEC's Pacific Regional Office and had represented the Orange County Board of Supervisors, a case which gave him firsthand experience with the SEC's expectations for elected officials and how the SEC viewed those that fell short.¹²³⁷

In the months following this advice, the Council learned of several instances where the City faced significant potential liability, but made no inquiry as to whether these potential threats to the City's finances were disclosed to the investing public. In January 2002, the Council was informed that the City was violating the Clean Water Act, and as a result could be forced to repay hundreds of millions of dollars in

¹²³⁴ Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006).

¹²³⁵ Interview by the Audit Committee with Toni Atkins (Apr. 28, 2006); Interview by the Audit Committee with Donna Frye (May 3, 2006); Interview by the Audit Committee with Brian Maienschein (May 12, 2006); Interview by the Audit Committee with Scott Peters (May 1, 2006).

¹²³⁶ Interview by the Audit Committee with Matthew Anhut (May 25, 2006); Interview by the Audit Committee with Leslie Girard (May 11, 2006). Interview by Vinson & Elkins with Gerald E. Boltz and Matthew D. Anhut (Aug. 18, 2004). Mr. Boltz recently passed away and was not interviewed by the Audit Committee in connection with this report.

¹²³⁷ Interview by the Audit Committee with Matthew Anhut (May 25, 2006). Prior to his presentation to the City Council, Mr. Boltz had authored *Lessons from Orange County: The SEC's Requirements for Issuers and Public Officials*, available at <http://www.naco.org/cnews/1997/97-02-17/report.htm>.

grants and loans.¹²³⁸ Significantly, these officials learned of this problem in closed session, because it created a “Significant Exposure” to litigation.¹²³⁹

On March 18, 2002, City Council met in closed session to discuss the ongoing meet and confer negotiations. The Council members were shown a PowerPoint presentation, including a slide indicating that the pension system’s funded ratio had substantially declined, approaching 85% or 83.1% (depending on how it was calculated), and that if it fell to 82.3%, the “trigger” in MP-1 would be hit, requiring the City to pay the “full rate” estimated to be “a potential \$40m annual impact.”¹²⁴⁰ Significantly, at a closed session meeting held one month later, Council was shown the exact same slide warning of the precipitous decline of the funded ratio and the fiscal implications of hitting the “Trigger.”¹²⁴¹

Notwithstanding these looming problems, on April 29, 2002, the City Council approved the issuance of \$25,070,000 in Lease Revenue Bonds intended to finance improvements for fire and life safety facilities, without any disclosure of the City’s potential liabilities arising from the City hitting the MP-1 trigger or the City’s non-compliant sewer rates.¹²⁴² Notably, on that same day, the City Council in closed session discussed reducing the SDCERS trigger to 75%.¹²⁴³

In November 2002, the Council received a formal opinion from the City Attorney’s Office and the City Treasurer confirming the City’s “Significant Exposure to Litigation” as a result of its violations of federal and state law and its grant and loan conditions, and that a consequence of its continued violation

¹²³⁸ E-mail from Les Girard to Dennis Kahlie cc to Patricia Frazier and Mary Vattimo (Apr. 15, 2004); Dennis Kahlie, Salient Points, Sewer Cost of Service Compliance Issue (Nov. 13, 2002); Interview by the Audit Committee with Dennis Kahlie (Oct. 18, 2005).

¹²³⁹ San Diego City Council, Closed Session Report (Jan. 29, 2002).

¹²⁴⁰ Memorandum from Daniel E. Kelley, Labor Relations Manager, to Honorable Mayor and City Council (Mar. 15, 2002), with attached PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session at 66 (Mar. 18, 2002). In addition, another slide in the presentation specifically warned: “Given recent actuarial losses of the System, any consideration to absorb cost must carefully evaluate impact on System’s funding ration [sic].” *Id.* at 67.

¹²⁴¹ Memorandum from Cathy Lexin, Human Resources Director, and Elmer Heap, Deputy City Attorney, to Honorable Mayor and City Council (Apr. 12, 2002), with attached PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session at 39 (Apr. 15, 2002).

¹²⁴² San Diego, Cal., Ordinance O-19054 (Apr. 29, 2002). Councilmembers Scott Peters, Byron Wear, Toni Atkins, George Stevens, Brian Maienschein, Donna Frye, Jim Madaffer, Ralph Inzunza, and Mayor Richard Murphy voted to approve the offering. The Lease Revenue Bond issuance was the first offering authorized by the Council after the Council’s closed session presentation on sewer rate non-compliance in January 2002. Although the Ballpark Bonds were issued on February 15, 2002, the Council authorized the issuance and approved the “form” of the Preliminary Official Statement much earlier, on November 20, 2001. San Diego City Council Resolution R-295760 (Nov. 20, 2001).

¹²⁴³ PowerPoint Presentation, San Diego City Council Meet & Confer 2002 Closed Session (Apr. 29, 2002).

was immediate repayment of approximately \$370 million.¹²⁴⁴ Nonetheless, on June 30, 2003, the City Council approved the offering of Sewer Revenue Bonds, without making any inquiry as to whether the City's violations or their potentially serious consequences needed to be disclosed to investors.¹²⁴⁵ Instead, the 2003 Sewer Revenue Bond POS, like its predecessors, misleadingly informed the investing public only that the "City's rate structure has been reviewed by the State Board and no grant funds or costs under grant funded programs have been disallowed based on the nature of the rate structures."¹²⁴⁶ (The 2003 Sewer Revenue Bonds were never actually offered to the public. As discussed above, the offering was aborted on the eve of pricing after the POS's inaccurate pension disclosure was focused upon.) The City's potential liability arising from its non-compliant sewer rates was not disclosed to the public until February 2004, when Councilmember Frye informed the City's bond disclosure counsel, Paul Webber, about the issue.¹²⁴⁷

In fairness to the Council, several facts must be noted. First, the Council members clearly did not view ensuring the accuracy of bond disclosures as part of their duties, and aside from the Bryan Cave Memorandum and presentation, no one told them that they were charged with that obligation. Rather, the Council undoubtedly took comfort from the knowledge that members of the City Attorney's Office and City Manager's Office were directly responsible for that task, and were assisted by financial advisors and bond and disclosure counsel specializing in municipal bond offerings from Orrick, Herrington & Sutcliffe, LLP.¹²⁴⁸ Although the SEC asserted in the Orange County Report that such reliance does not absolve local officials of their duty to take "appropriate steps" when they know of facts indicating a risk that a disclosure may be misleading,¹²⁴⁹ the facts known to the Orange County Supervisors were very different than the facts known to the Council. The Orange County Supervisors had knowledge of facts "calling into question the County's

¹²⁴⁴ Memorandum from Mary Vattimo, City Treasurer, and Kelly J. Salt, Deputy City Attorney, to Honorable Mayor and City Council (Nov. 14, 2002).

¹²⁴⁵ Minutes, San Diego City Council Meeting at 15-16 (June 30, 2003). Council members Scott Peters, Michael Zucchet, Toni Atkins, Charles Lewis, Brian Maienschein, Donna Frye, James Madaffer, and Mayor Murphy voted to approve the offering. Councilmember Ralph Inzunza was not present. *Id.* at 16.

¹²⁴⁶ \$505,550,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Sewer Revenue Bonds, Series 2003A and Series 2003B (Preliminary Official Statement) at 27 ("Sept. [●], 2003").

¹²⁴⁷ E-mail from Paul S. Maco to Paul Webber (Feb. 12, 2004).

¹²⁴⁸ In connection with the City's 2002 and 2003 Tax Anticipation Note Series ("TANS") offerings, the Council did not receive a copy of the POS along with the implementing resolution when voting to approve the POS and other aspects of the offerings. See San Diego City Council Resolution No. R-296500 (May 14, 2002); San Diego City Council Resolution No. R-297969 (May 20, 2003). Notably, the City Treasurer—as opposed to the City Manager—was charged with overseeing the finalization of the POS and the OS for TANS offerings without Council's continuing supervision or final approval.

¹²⁴⁹ Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *8-9 (Jan. 24, 1996).

ability to repay the securities.¹²⁵⁰ In the face of that knowledge, the SEC stated that the Supervisors were required to take steps such as reading the disclosure documents and asking questions about the disclosure.¹²⁵¹

The role of the San Diego City Council in government was significantly different than that of the Orange County Board.¹²⁵² The Orange County Board was charged with supervising, and had ultimate responsibility for, the official conduct of all County officers, including the Treasurer, and it had fiscal powers which included the issuance of municipal securities.¹²⁵³ In contrast, San Diego's City Manager form of government placed far less power and responsibility with the City Council. The City Manager was responsible for the activities of all City departments, including those tasked with preparing the bond disclosures.¹²⁵⁴

Notwithstanding the San Diego City Council's somewhat lesser role, it was still the governmental body that authorized the City's bond issuances. As such, the same duties placed upon the Orange County Board applied to the San Diego City Council. The Council's awareness of potentially significant liabilities in advance of several of those issuances should have caused the Council to take appropriate steps to make sure the City was not disseminating inaccurate or misleading information about these liabilities, by reading the disclosures or even just asking questions. It took no such steps. As such, the Mayor and City Council must share the responsibility for some of the City's disclosure failures due to their negligent behavior.

¹²⁵⁰ Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *7 (Jan. 24, 1996).

¹²⁵¹ Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *9 (Jan. 24, 1996).

¹²⁵² Although the SEC has brought enforcement actions and issued Reports of Investigations relating to defective municipal bond disclosures since the Orange County Report – including actions based solely on negligence – none have addressed the obligations of elected officials. See, e.g., *In re Massachusetts Turnpike Authority and James E. Kerasiotes*, Securities Act Release No. 8260, 80 SEC Docket 2081, 2003 WL 21757219 (July 31, 2003); *In re City of Miami, Florida*, Securities Act Release No. 8213, 79 SEC Docket 2580, 2003 WL 1412636 (Mar. 21, 2003); *In re City of Syracuse, New York*, Securities Act Release No. 7460, 65 SEC Docket 1199, 1997 WL 598008 (Sept. 30, 1997).

¹²⁵³ Report of Investigation in the Matter of County of Orange, California As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36,761, 61 SEC Docket 382, 1996 WL 26755 at *2 (Jan. 24, 1996).

¹²⁵⁴ San Diego City Charter art. V, §§ 28-30. In connection with the City's 2002 and 2003 Tax Anticipation Note Series ("TANS") offerings, Council did not receive a copy of the POS along with the implementing resolution when voting to approve the POS and other aspects of the offerings. See San Diego City Council Resolution No. R-2002-1509 (May 14, 2002); San Diego City Council Resolution No. R-2003-1262 (May 20, 2003). Notably, the City Treasurer – as opposed to the City Manager – was charged with overseeing the finalization of the POS and the OS for TANS offerings without Council's continuing supervision or final approval.

E. SDCERS Administrator

As previously noted, SDCERS Administrator Lawrence Grissom understood and appreciated the actuarial underpinnings of SDCERS.¹²⁵⁵ He was intricately involved with MP-1, serving as the “client” in dealings with the Board’s advisors, including its actuary and fiduciary counsel.¹²⁵⁶ After MP-1 was approved, Mr. Grissom supported the City in its resistance to reporting any NPO, and when the City did finally report an NPO, he helped craft the misleading disclosure that the NPO was “funded in a reserve.”¹²⁵⁷ Additionally, Mr. Grissom signed the transmittal letters for the SDCERS CAFRs from 1999-2003.¹²⁵⁸ The 2001 SDCERS CAFR, consistent with the other CAFRs issued during this time period, stated that it “is intended to provide complete and reliable information”¹²⁵⁹ and that “[i]t is our intent to ensure that the financial information is accurate and fair, and all material disclosures have been made.”¹²⁶⁰ As previously discussed, all of these SDCERS CAFRs provided inadequate and misleading disclosure regarding the pension system to the investing public. Although he was the person most knowledgeable at SDCERS about MP-1 and certified the SDCERS CAFR every year from 1999 to 2003, Mr. Grissom failed to ensure that MP-1 and other pension issues were adequately disclosed in the SDCERS CAFRs. The evidence suggests his failure to do so was, at a minimum, reckless, and more likely intentional.

¹²⁵⁵ Minutes, SDCERS Board Meeting at 1, 7 (May 20, 2005); Memorandum from Lawrence B. Grissom, Retirement Administrator, to Bruce Herring, Deputy City Manager (July 1, 2002); Memorandum from Lawrence B. Grissom, Retirement Administrator, to Retirement Board, via Business Procedures Committee (Mar. 6, 2002); Memorandum from Lawrence B. Grissom, Administrator, to Retirement Board (June 18, 1996); Memorandum from Lawrence B. Grissom, Administrator, to Retirement Board of Administration (June 12, 1996); Minutes, SDCERS Board Meeting at 1, 31 (May 19, 1995).

¹²⁵⁶ City Manager, Retirement System Proposal (Consolidated from Proposal Dated June 7, 1996, as Modified by June 21, 1996 Proposal); Memorandum from Lawrence B. Grissom, Administrator, to Retirement Board (June 18, 1996); Memorandum from Lawrence B. Grissom, Administrator, to Retirement Board of Administration (June 12, 1996).

¹²⁵⁷ E-mail from Rick Roeder to Lawrence Grissom and Paul Barnett (Sept. 5, 2003); E-mail from Lawrence Grissom to Terri Webster (Mar. 31, 1998).

¹²⁵⁸ San Diego City Employees’ Retirement System, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2003 at 11 (Dec. 1, 2003); San Diego City Employees’ Retirement System, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2002 at 8 (Nov. 1, 2002); San Diego City Employees’ Retirement System, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2001 at 8 (Nov. 30, 2001); San Diego City Employees’ Retirement System, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2000 at 9 (Nov. 22, 2000); San Diego City Employees’ Retirement System, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 1999 at 8 (Aug. 31, 2000).

¹²⁵⁹ San Diego City Employees’ Retirement System, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2001 at 8 (Nov. 30, 2000).

¹²⁶⁰ San Diego City Employees’ Retirement System, Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2001 at 2 (Nov. 30, 2000).